

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff, No. 4:20-CR-288-DPM-1

V.

MUJERA BENJAMIN LUNG 'AHO,

Wednesday, August 23, 2023,
Little Rock, Arkansas

Defendant.

**TRANSCRIPT OF PLEA
BEFORE THE HONORABLE D.P. MARSHALL, JR.,
UNITED STATES DISTRICT JUDGE**

APPEARANCES:

On Behalf of the Plaintiff:

MR. JOHN RAY WHITE,
Assistant United States Attorney
United States Attorney's Office
Eastern District of Arkansas
Post Office Box 1229
Little Rock, Arkansas 72203-1229

On Behalf of the Defendant:

MR. MICHAEL KIEL KAISER,
Lassiter & Cassinelli
1218 West Sixth Street
Little Rock, AR 72201

Defendant present

Proceedings recorded by FTR Gold. Transcript prepared utilizing computer-aided transcription

PROCEEDINGS

THE COURT: This is the United States against Mujera Lung'aho. It's case number 4:20-CR-288-DPM-1. Mr. Lung'aho is here -- welcome back, sir -- with Mr. Kaiser at his side.

MR. KAISER: Good morning, Judge.

THE COURT: The United States is here in the person of Mr. White. Agent Hicks at the table. Good to see both of you.

MR. WHITE: Thank you, your Honor.

9 THE COURT: We're here today, Mr. Lung'aho, because
10 the lawyers have told my staff that you're thinking about making
11 a deal with the United States and pleading guilty conditionally
12 to one of these charges. For all of that to happen, I must make
13 certain of several things. So bear with me this morning,
14 please.

15 Counsel, as y'all will note, we do not have a court
16 reporter. The Court is busy this morning and the reporters are
17 otherwise occupied. Our transcript is therefore being made by a
18 recording. Unless I say otherwise, therefore, I need everyone
19 to remain seated on your microphone speaking at pledge of
20 allegiance speed and with -- with emotion so that everything can
21 be recorded and we can have a good transcript.

22 All right. Let's get back to business.

23 If you will please stand, Mr. Lung'aho. This is one of
24 those times I need you to stand. My deputy will give you the
25 oath.

1 (Defendant sworn.)

2 THE COURT: You can be seated, sir. Thank you.

3 And tell me the truth, Mr. Lung'aho, because it's a crime
4 if a man lies after he has taken the oath. Do you understand?

5 THE DEFENDANT: Yes, I understand.

6 THE COURT: Good. Is your mind clear?

7 THE DEFENDANT: It is very clear.

8 THE COURT: Are you under the influence of any
9 substance at all that clouds your mind?

10 THE DEFENDANT: Not at all.

11 THE COURT: Had any alcohol to drink in the last day
12 or two?

13 THE DEFENDANT: No, sir.

14 THE COURT: What about medicine, prescription or
15 over-the-counter? Are you taking any that affects your
16 thinking?

17 THE DEFENDANT: Lexapro to help with anxiety, but I
18 don't think it would alter my thought process.

19 THE COURT: I appreciate the clarification. Do you
20 think that that medicine allows you to think better and more
21 clearly?

22 THE DEFENDANT: Not really, no.

23 THE COURT: Do you find it interferes with your
24 thinking?

25 THE DEFENDANT: No. No.

1 THE COURT: Okay. Do you think your mind is clear
2 today?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Are you under the influence of any
5 substance at all that, as far as you can tell, clouds your mind?

6 THE DEFENDANT: No, sir.

7 THE COURT: How has Mr. Kaiser done as your lawyer?

8 THE DEFENDANT: Very well.

9 THE COURT: Has he communicated with you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Explained your options to you?

12 THE DEFENDANT: Yes.

13 THE COURT: Gotten you ready for today?

14 THE DEFENDANT: Yes.

15 THE COURT: Good. Do you understand that while the
16 Lawyer gets to make many of the smaller decisions in the case,
17 what I'll call the tactical decisions, the client gets to make
18 the most important decisions, and among those is how to plead.
19 Do you understand that architecture?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that it's your decision
22 and yours alone on whether to go to trial or offer a guilty
23 plea?

24 THE DEFENDANT: I do.

25 THE COURT: Have you thought carefully about what

1 choice to make?

2 THE DEFENDANT: Indeed, I have.

3 THE COURT: Good. Have you talked thoroughly with
4 Mr. Kaiser about your options?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that whichever fork in
7 that road you want to take, trial or offering a plea, either
8 fork is fine with me, with the Court. Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: If you want a trial, we'll have a trial.
11 If you want to offer a plea, I'll consider it.

12 THE DEFENDANT: Right.

13 THE COURT: It's your call.

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. Has anyone threatened you to get
16 you to change your plea?

17 THE DEFENDANT: No.

18 THE COURT: Has anyone threatened someone that you
19 love or something that you care about to get you to change your
20 plea?

21 THE DEFENDANT: No, they have not.

22 THE COURT: I understand that this proposed plea
23 agreement is a two-way street of mutual promises. Has anyone
24 made any other promise to you to get you to change your plea?

25 THE DEFENDANT: Not anything other than what's

1 articulated in the plea to --

2 THE COURT: Good. That's what I wanted to pin down.

3 It's all in the paperwork, is it?

4 THE DEFENDANT: Yes.

5 THE COURT: Good.

6 The law requires me, Mr. Lung'aho, to tell everybody
7 sitting where you are, each person, that if he is not a citizen
8 of the United States and he pleads guilty to a charge, a serious
9 charge like the one you're considering pleading guilty to, that
10 there could be serious immigration consequences in addition to
11 the punishments prescribed by law. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Good. My memory is that you are an
14 educated man; is that correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you read the charges pending against
17 you?

18 THE DEFENDANT: Yes, I have.

19 THE COURT: Do you understand them?

20 THE DEFENDANT: Yes.

21 THE COURT: In particular, Count 11. Have you read it
22 and do you understand it?

23 THE DEFENDANT: Yes, I have, and I do understand it.

24 THE COURT: Good. And thank you for answering both
25 parts of my compound question.

1 This proposed plea agreement, have you read it?

2 THE DEFENDANT: Yes.

3 THE COURT: Have you discussed it thoroughly with
4 Mr. Kaiser?

5 THE DEFENDANT: Yes, I have.

6 THE COURT: Did he answer any questions you may have?

7 THE DEFENDANT: Yes, he did.

8 THE COURT: Have y'all discussed possible sentences,
9 how that might sort out?

10 THE DEFENDANT: Yes, we have gone over it, to my
11 understanding as the best we could so far.

12 THE COURT: Good. Don't go into the details. I
13 didn't mean to inquire into the details of y'all's talk. That's
14 privileged because it's between you and your lawyer. I just
15 wanted to be sure that you had had discussions in the category
16 of sentencing.

17 THE DEFENDANT: Yes, we have.

18 THE COURT: Good. Whatever Mr. Kaiser may have said
19 to you is a prediction, his educated guess about how things are
20 going to sort out. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: He has been in front of me and in this
23 court many times. He knows your case well, obviously. He's
24 litigated it vigorously here and in the court of appeals. And
25 he knows the law. But, a couple of points:

1 One: it's just not within his power to see the future. He
2 doesn't know what I'm going to do. Are you with me?

3 THE DEFENDANT: Yes.

4 THE COURT: Two: he can't promise you a sentence.
5 That's my call down the line, not his. Do you understand?

6 THE DEFENDANT: Yes.

7 THE COURT: And three: he makes mistakes. He's a
8 human being. He's doing, I'm sure, the best he can, but he's
9 not perfect. What I'm trying to underline for you here is the
10 uncertainty about sentencing as we sit here today. Do you
11 understand that?

12 THE DEFENDANT: Yes, I understand that.

13 THE COURT: Good. If you're disappointed in the
14 sentence that I ultimately decide on, that disappointment is not
15 a sufficient reason to say to me, "Judge Marshall, please give
16 me my guilty plea back, I would like to have a trial. Now that
17 I know what you're going to do, I'm going to take my chances in
18 front of a jury." Do you understand?

19 THE DEFENDANT: I understand.

20 THE COURT: Good.

21 Mr. Kaiser, how are you today?

22 MR. KAISER: Doing quite well, your Honor, thank you.

23 THE COURT: Good. Do you have any concern about the
24 clarity of your client's mind?

25 MR. KAISER: None whatsoever.

1 THE COURT: Have y'all communicated regularly and
2 thoroughly in recent days and weeks about the matter now before
3 the Court?

4 MR. KAISER: Yes, sir.

5 THE COURT: Have you conveyed to him all plea offers
6 made by the United States?

7 MR. KAISER: I have, your Honor.

8 THE COURT: From your perspective, is the
9 lawyer-client relationship intact?

10 MR. KAISER: Yes, sir.

11 THE COURT: Good. Thank you.

12 I find that the lawyer-client relationship is in good
13 shape. I also find, Mr. Lung'aho, that your mind is clear and
14 you know exactly why we're here and you can make the decisions
15 that you need to make today.

16 If at any point during the hearing in response to my
17 question or question of mine or just in general you need to take
18 a break to consult privately with Mr. Kaiser, please tell me and
19 I will allow you to do so. Okay?

20 THE DEFENDANT: Okay.

21 THE COURT: Good.

22 Mr. White, how are you?

23 MR. WHITE: I'm good, your Honor.

24 THE COURT: Good. Resist the temptation to stand up.
25 I know it's an old habit with you. Are things okay down the

1 street?

2 MR. WHITE: Yes, sir, they are. I just -- there's
3 lots going on, as the Court just mentioned a minute ago. And I
4 just came from Judge Baker's courtroom where they're about to
5 start a closing argument in another trial.

6 THE COURT: I knew that my sister Baker was getting
7 close on that matter and was about to give the case to the jury.
8 I haven't had the chance to ask her about the nature of the
9 case. What's the charge?

10 MR. WHITE: Felon in possession of ammunition, your
11 Honor.

12 THE COURT: Okay. Well -- and who among your
13 colleagues has been up there working hard?

14 MR. WHITE: Erin O'Leary and Bart Dickinson for the
15 government. And then Ms. Gray and Alex Betton are representing
16 the defendant.

17 THE COURT: Very good. Okay. Well, maybe we can get
18 you up to watch, but I don't know. We'll see.

19 Would you please -- as I understand the parties' agreement,
20 Mr. Lung'aho is considering pleading guilty to Count 11,
21 maliciously -- that makes it a crime to maliciously destroy
22 property by fire, government property.

23 Would you please put some flesh on those bones on Count 11
24 and then put on the record the potential penalties that he would
25 face if I accept that plea.

1 MR. WHITE: I will withdraw this caveat, your Honor. I
2 brought over everything I thought I needed except for the
3 Indictment.

4 THE COURT: Well, let me try and you double-check me,
5 how about?

6 MR. WHITE: That would be great, if the Court doesn't
7 mind.

8 THE COURT: So as I read the Indictment -- and I think
9 it's a Superseding Indictment, it's Document 56 in the court
10 file -- Count 11 alleges that on or about September 3rd, 2020,
11 in the Eastern District of Arkansas, the defendant, Mujera
12 Benjamin Lung'aho, maliciously damaged and destroyed by means of
13 fire, a vehicle, namely: a patrol car, located at the North
14 Little Rock Police Department Rose City Substation, which was
15 owned in whole or in part by the City of North Little Rock, an
16 organization receiving federal financial assistance.

17 All in violation of Title 18, United States Code,
18 Section 844(f)(1).

19 Mr. Lung'aho, do you understand that charge?

20 THE DEFENDANT: Yes.

21 THE COURT: Are you clear on what it is the grand jury
22 is saying that you supposedly did wrong?

23 THE DEFENDANT: Yes.

24 THE COURT: Good.

25 Counsel, double-check me on potential penalties. I believe

1 the statute -- the applicable statute says not less than five
2 years in prison, not more than 20 years in prison. So somewhere
3 in that range. Not more than three years of supervision after
4 prison when you'd be under the thumb of the probation office. A
5 fine of not more than \$250,000, assuming ability to pay, and a
6 \$100 fee called a special assessment.

7 Mr. White, do you agree that those are the applicable
8 penalties?

9 MR. WHITE: I do, your Honor.

10 THE COURT: Mr. Kaiser?

11 MR. KAISER: Yes, sir.

12 THE COURT: Do you understand those potential
13 penalties, Mr. Lung'aho?

14 THE DEFENDANT: Yes.

15 THE COURT: Good.

16 All right. I believe I covered all the ground that I
17 need -- needed to earlier in the case about whether you thought
18 about all of this and your options here in consultation with
19 counsel, whether you've been threatened or not to make the deal.
20 So let's move into this proposed plea agreement and the
21 particulars of it.

22 I want to be sure that you understand it, Mr. Lung'aho, and
23 that you know what you're getting and what you're giving up in
24 the bargain, okay?

25 THE DEFENDANT: Okay.

1 THE COURT: Mr. White, would you summarize the
2 parties' plea agreement?

3 MR. WHITE: I will, your Honor.

4 The biggest transaction, your Honor, is that Mr. Lung'aho
5 agrees to plead guilty to Count 11 of the Superseding
6 Indictment. And following the Court's acceptance of his guilty
7 plea, the United States will ask the Court to dismiss the other
8 counts in the Superseding Indictment that Mr. Lung'aho is
9 charged with.

10 There are a number of other particular provisions of the
11 plea agreement, and the Court knows usually I paraphrase those
12 provisions, but because Mr. Kaiser has been as particular as he
13 has about some of the language, I'm just going to read some of
14 those provisions if that's all right. And I'll just start with
15 paragraph 2 of the plea agreement, describes the elements of the
16 offense. And then the last paragraph of paragraph 2 provides
17 that the defendant is going to agree that he committed those
18 offenses, but that his admission to paragraph 2D is not intended
19 to waive his arguments related to the conditional appeal that
20 the parties have agreed to in writing.

21 Paragraph 3 deals with potential penalties.

22 Paragraph 4 deals with waivers, and it begins with a number
23 of waivers related to his guilty plea: That he's waiving his
24 right to appeal pretty much everything including his guilty
25 plea, the Court's sentence, except he reserves the right to

1 appeal claims of prosecutorial misconduct, or if the Court,
2 after determining his guideline range, imposes a sentence above
3 the guideline range and he makes a contemporaneous objection, he
4 can appeal that also.

5 Particularly in paragraph 4 -- I know it's -- I would call
6 it -- what is it, clause two now? That he's reserving his right
7 to appeal the Court's ruling that 844 (f)(1) is constitutional
8 as applied to his case as set forth in Document 246 in which the
9 Court denied his motion to dismiss Counts 1, 2, 6, 7, 10, and 11
10 of the Superseding Indictment.

11 He is waiving his right to collaterally attack the
12 conviction. That is after all of his appeals have run and if he
13 wants to attack the conviction some other way, he cannot do that
14 unless he shows prosecutorial misconduct or ineffective
15 assistance of his own counsel.

16 And then he's also agreed to waive the right to have his
17 sentence modified under 3582(c)(2) or to object to restitution
18 or forfeiture that the Court may order as well as a number of
19 trial rights.

20 And, your Honor -- I can't remember -- did the Court
21 already go over the -- to plead guilty he'll have to waive the
22 right to all these -- to be presumed innocent or to confront and
23 cross-examine witnesses?

24 THE COURT: I did not go through the trial-related
25 rights, Mr. White, and I would appreciate you doing so and then

1 I'll confirm.

2 MR. WHITE: I'll do that.

3 So he's also waiving the right to plead not guilty or to
4 persist in that plea and the right to a speedy and public trial
5 before a jury, he's waiving the right to be presumed innocent
6 and to have the burden of proof placed on the United States to
7 establish guilt beyond a reasonable doubt, and the right to
8 confront and cross-examine witnesses, the right to testify in
9 his own behalf if he had the intention to or to remain silent if
10 he had chosen that, to call witnesses or to require them to
11 appear. And part of the reason that he's -- that that comes up
12 is that if the Court is going to -- if he intends to plead
13 guilty, the Court will have to ask him if he's guilty and he'll
14 be required to say so in open court. And that's one of those
15 rights. And then he also understands that if there's a question
16 about his citizenship, a guilty plea may have consequences with
17 respect to that.

18 Your Honor, the parties in paragraph 5 have kind of
19 negotiated some stipulations, particularly that -- pardon me --
20 there's a statutory minimum sentence for the crime charged. And
21 the United States, as part of its negotiations with the
22 defendant and Mr. Kaiser, has agreed not to seek a sentence
23 greater than 84 months imprisonment, notwithstanding the fact
24 that his -- the statutory range is five years to 20 years. We
25 have agreed that the base offense level should be calculated

1 pursuant to Guideline Section 2K1.4. And we're recommending
2 that his offense level be increased under Guideline
3 Section 3B1.1, only three points, three levels.

4 He understands that he's -- he'll be eligible for a
5 two-level reduction for acceptance of responsibility and we'll
6 -- and the United States will ask for a third level if he
7 doesn't do anything inconsistent with acceptance of
8 responsibility between his change of plea and sentencing.

9 The parties stipulate there's no other enhancements or
10 reductions under 2K1.4 Chapter 3 or Chapter 5 of the guidelines
11 other than those specifically set out in the agreement in the
12 addendum.

13 And then paragraph 4F provides a factual basis for the
14 offense as well as some of the relevant conduct that is
15 described that was part of his offense. And I'm assuming at
16 this point the Court is wanting me to skip that for the time
17 being rather than read that; is that correct, your Honor?

18 THE COURT: Yes, on the facts, the factual
19 stipulations?

20 MR. WHITE: Yes, your Honor.

21 THE COURT: Yes.

22 MR. WHITE: And then he's specifically waiving any
23 objection to searches or seizures or statements that have been
24 made as a part of the investigation as well as his guilty plea.

25 And then, finally, in paragraph 5 he acknowledges that

1 despite the fact that the parties have negotiated this pretty
2 hard, the Court's not bound by the parties' negotiations with
3 respect to the plea agreement or the addendum. He acknowledges
4 that the guideline -- the guidelines themselves are advisory and
5 the Court is not bound by those. There are some other kind of
6 standard provisions, your Honor.

7 And then we get to paragraph 9D which I want to mention
8 specifically, and that is with respect to restitution. And the
9 parties agree that those amounts and those organizations are
10 entitled to the money that is described in paragraph 9D.

11 There are -- there's a provision on breach of plea
12 agreement, which is paragraph 14.

13 And then other than that, the provisions are fairly
14 standard with the exceptions of paragraph 18 -- which I say an
15 exception -- it's actually standard, but it's important because
16 in that the defendant acknowledges that he has read the plea
17 agreement and that he's discussed it with his lawyer and he's
18 entering into it on purpose.

19 And then there are also, your Honor, is a plea agreement
20 addendum which we'll ask the Court to file under seal at the
21 appropriate time.

22 THE COURT: Thank you, Mr. White.

23 Mr. Lung'aho, is that the deal you believe you've made with
24 the United States?

25 THE DEFENDANT: Yes, it is.

1 THE COURT: Do you understand the deal in general?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand it and each and every
4 particular?

5 THE DEFENDANT: Yes.

6 THE COURT: Have you thought carefully about whether
7 to make this deal?

8 THE DEFENDANT: I have.

9 THE COURT: Have you consulted fully with Mr. Kaiser
10 about whether to make this deal?

11 THE DEFENDANT: Yes.

12 THE COURT: Have you been involved with Mr. Kaiser in
13 the negotiations of the particular terms of the deal?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that under this deal you
16 are waiving all of your trial-related rights?

17 THE DEFENDANT: That's correct.

18 THE COURT: And if you plead guilty and I accept,
19 everyone signs the agreement, then the only question left in the
20 case will be what's the just and fair sentence under law for
21 you. Do you follow?

22 THE DEFENDANT: Yes.

23 THE COURT: And we discussed earlier about how that
24 decision, the sentencing decision is for me to make down the
25 line, right?

1 THE DEFENDANT: Yes, we did.

2 THE COURT: Good. And you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Good. The waivers that Mr. White went
5 over in addition to the trial-related rights, do you understand
6 the other rights that you're waiving?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: Do you understand the restitution
9 obligation that you're undertaking here in this agreement?

10 THE DEFENDANT: I do.

11 THE COURT: Do you understand the reservation of your
12 right to appeal my ruling about the constitutionality of this
13 statute as applied to you?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Okay. Counsel, a question for both of
16 you. Does the parties' agreement address what happens if
17 Mr. Lung'aho is successful on appeal? What happens to the case
18 as against him? The ultimate practical effect, I would say?

19 MR. WHITE: No, your Honor.

20 THE COURT: Mr. Kaiser?

21 MR. KAISER: It does not.

22 THE COURT: Okay.

23 Mr. Lung'aho, do you understand -- do you recall the
24 section of the agreement about stipulations, things that the
25 parties are agreeing?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: Do you understand the last provision of
3 that section that indicates that I am not bound, the Court is
4 not bound by the parties' stipulations?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. Mr. White, if we had a trial, do
7 you believe that you and your colleagues on behalf of the United
8 States could prove each and every fact that is written in
9 paragraph something F, 5F, as in Frank -- or Foxtrot if we're
10 going to use our military labeling -- in 5F of the agreement?

11 MR. WHITE: I do, your Honor.

12 THE COURT: Okay. Mr. Lung'aho, do you need to take a
13 break and visit privately with Mr. Kaiser about anything before
14 I ask the harder questions?

15 THE DEFENDANT: No.

16 THE COURT: All right. As to Count 11 of the
17 Superseding Indictment charging you with this malicious
18 destruction of the North Little Rock police car, arson, here in
19 the Eastern District of Arkansas, how do you plead?

20 THE DEFENDANT: Guilty.

21 THE COURT: Is that because you are, in fact, guilty
22 of that charge?

23 THE DEFENDANT: Yes, it is.

24 THE COURT: Do you agree with and stipulate to -- or
25 do you agree with each and every fact as specified in

1 paragraph 5F of the agreement?

2 THE DEFENDANT: Yes.

3 THE COURT: That's a tentative -- there's some
4 tentativeness in your voice and your body language. And it's
5 important -- I have to conclude that there's a sufficient
6 factual basis for your plea. And so the particulars here are
7 important. I'll give you a second to talk about that.

8 (Discussion held off the record.)

9 MR. KAISER: We're ready to proceed, your Honor.

10 Thank you for allowing us that time.

11 THE COURT: You're welcome, Mr. Kaiser.

12 So, Mr. Lung'aho, again, paragraph 5F, as in Foxtrot, in
13 the agreement, it's at pages five and six. Take a minute and
14 look back through it.

15 Is each and every fact as written in the parties' agreement
16 true and correct as far as you know?

17 THE DEFENDANT: Yes. Based on my recollection and
18 review of the discovery, yes.

19 THE COURT: The statute here makes it a crime for
20 someone to maliciously damage or destroy or attempt to damage or
21 destroy by means of fire or an explosive any building, vehicle,
22 or other personal or real property that's owned wholly or partly
23 or leased to the United States or a department or agency of it
24 or some institution or organization receiving federal funds or
25 federal financial assistance.

1 Did you maliciously damage or attempt to damage by means of
2 the Molotov cocktail the patrol car located at the North Little
3 Rock Police Department Rose City Substation, a patrol car owned
4 by North Little Rock, somewhere between September 3rd, 2020?

5 THE DEFENDANT: I did.

6 THE COURT: Is this what you want to do, Mr. Lung'aho,
7 to make this deal with the United States and take that appeal
8 and move on?

9 THE DEFENDANT: Yes.

10 THE COURT: Are you sure?

11 THE DEFENDANT: Yes.

12 THE COURT: Mr. Kaiser, do you know of any reason I
13 should not accept the plea?

14 MR. KAISER: No, sir.

15 THE COURT: Mr. White, same question?

16 MR. WHITE: No, your Honor.

17 THE COURT: I find that the crime charged in Count 11
18 of the Superseding Indictment was committed by you, Mujera
19 Benjamin Lung'aho, now before the Court. You've sworn to tell
20 me the truth, sir. You've agreed to the facts as specified in
21 the parties' plea agreement and you've answered specifically
22 when I asked you in terms of the statute what your intentions
23 were on that evening.

24 So there's a sufficient factual basis for the plea. I find
25 that your plea is knowing and voluntary. You know your rights.

1 You know, I'm certain, what it is that you're getting and what
2 it is that you're giving up under the agreement, in particular
3 you understand that we're not going to have a trial. We'll move
4 on to sentencing. And that you're keeping the right to go to
5 the court of appeals and ask that court if I was correct or
6 incorrect in my analysis on whether this statute is
7 constitutional as applied to you in our circumstances here, the
8 federal funding issues that are all inside here in the agreement
9 and that our record was clear about before.

10 I appreciate counsel's work pulling that together.

11 But long story short on this issue, Mr. Lung'aho. I'm
12 clear, I'm certain that you understand what you're getting and
13 what you're giving up in the deal.

14 And, last, I don't see any indication that anyone has
15 pushed or pulled you into doing this. I think you have made up
16 your own mind about it. And, indeed, as you told me, you had
17 been, unlike many defendants, deeply involved in the negotiation
18 of the particular terms of the plea agreement. And I applaud
19 that. I wish that more of the folks that came through those
20 doors or the side door had your level of education and
21 engagement and sophistication, were able to work with your
22 lawyer in the way you have done to -- it helps the system work
23 better, quite frankly.

24 So for all of those reasons, I accept your plea of guilty
25 to Count 11.

1 Mr. White, a motion?

2 MR. WHITE: I ask the Court to dismiss the remaining
3 counts that are against Mr. Lung'aho, please, your Honor.

4 THE COURT: I grant the United States motion. All
5 other counts in the Superseding Indictment and all counts in the
6 original Indictment as to you and you only are dismissed,
7 Mr. Lung'aho. They're dismissed without prejudice. And we
8 will -- we will move on in the case to sentencing in a few
9 months.

10 Counsel, if you'll get with Ms. Black after I leave the
11 courtroom. She'll come up with a date and time certain for you
12 that's convenient, I hope, for all of us. And then we'll see
13 what the court of appeals says about this interesting issue, and
14 we will all move on with our lives.

15 Mr. Kaiser, any other ground to cover?

16 MR. KAISER: No, sir.

17 THE COURT: Okay. I was going to ask Mr. Lung'aho if
18 he had any questions, and if so, to consult with you before he
19 asked me, but I see that you've already done that, so I'll skip
20 that step.

21 MR. KAISER: Yes, sir.

22 THE COURT: Mr. White, any other ground to cover?

23 MR. WHITE: No, your Honor.

24 THE COURT: All right. Counsel, I thank you for your
25 work. Obviously a great deal of effort went into this before we

1 came into the courtroom today and I look forward to seeing you
2 around the bend on our sentencing. We're in recess.

3 (Proceedings concluded.)

4 TRANSSCRIBER'S CERTIFICATE

5 I certify that the foregoing is a true and correct
transcript, to the best of my ability, of the recorded
6 proceedings.

7 /s/B. Graham Higdon, RMR, CRR Date: February 7, 2024
8 United States Court Reporter

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